

Senate Engrossed House Bill

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
House of Representatives
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 238

HOUSE BILL 2278

AN ACT

AMENDING TITLE 45, CHAPTER 2, ARTICLE 9, ARIZONA REVISED STATUTES, BY ADDING SECTION 45-579; RELATING TO THE GROUNDWATER CODE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 45, chapter 2, article 9, Arizona Revised Statutes,
3 is amended by adding section 45-579, to read:

4 45-579. Assignment of certificate of assured water supply;
5 definition

6 A. A HOLDER OF A CERTIFICATE OF ASSURED WATER SUPPLY ISSUED PURSUANT
7 TO SECTION 45-576 MAY ASSIGN THE CERTIFICATE, IN WHOLE OR IN PART, TO ANOTHER
8 PERSON IF THE HOLDER APPLIES TO THE DIRECTOR FOR APPROVAL WITHIN TEN YEARS
9 AFTER THE ORIGINAL CERTIFICATE WAS ISSUED AND THE DIRECTOR APPROVES THE
10 APPLICATION. AN APPLICATION MAY BE FILED UNDER THIS SECTION MORE THAN TEN
11 YEARS AFTER THE ORIGINAL CERTIFICATE WAS ISSUED IF A MINIMUM OF FIVE HUNDRED
12 LOTS WITHIN THE SUBDIVISION COVERED BY THE CERTIFICATE HAVE BEEN SOLD TO
13 INDIVIDUAL HOME BUYERS BY THE HOLDER OF THE CERTIFICATE AND ANY PREVIOUS
14 HOLDERS OF THE CERTIFICATE. AN APPLICATION FILED UNDER THIS SECTION SHALL
15 BE ON A FORM PRESCRIBED BY THE DIRECTOR. THE DIRECTOR SHALL APPROVE A TIMELY
16 APPLICATION FOR ASSIGNMENT OF A CERTIFICATE OF ASSURED WATER SUPPLY IF THE
17 DIRECTOR DETERMINES THAT ALL OF THE FOLLOWING APPLY:

18 1. THE PROPOSED ASSIGNEE OWNS OR IS ACQUIRING THE SUBDIVISION TO WHICH
19 THE CURRENT CERTIFICATE APPLIES, OR IF THE APPLICATION IS FOR A PARTIAL
20 ASSIGNMENT, THE PORTION OF THE SUBDIVISION TO WHICH THE CURRENT CERTIFICATE
21 APPLIES THAT IS THE SUBJECT OF THE PROPOSED ASSIGNMENT.

22 2. THERE HAS NOT BEEN ANY MATERIAL CHANGE IN THE SUBDIVISION PLAT,
23 PLAN OR MAP SINCE THE CERTIFICATE WAS ORIGINALLY ISSUED, INCLUDING AN
24 INCREASE IN THE TOTAL NUMBER OF HOUSING UNITS OR AN INCREASE IN THE TOTAL
25 WATER DEMAND FOR THE SUBDIVISION, INCLUDING ALL ASSIGNMENTS.

26 3. EITHER THERE IS WATER DELIVERY INFRASTRUCTURE IN PLACE THAT IS
27 CAPABLE OF DELIVERING WATER TO EACH LOT WITHIN THE SUBDIVISION OR THE
28 PROPOSED ASSIGNEE HAS DEMONSTRATED FINANCIAL CAPABILITY TO COMPLETE THE
29 INFRASTRUCTURE. IN DETERMINING WHETHER THE PROPOSED ASSIGNEE HAS
30 DEMONSTRATED FINANCIAL CAPABILITY TO COMPLETE THE INFRASTRUCTURE, THE
31 DIRECTOR SHALL APPLY THE SAME STANDARDS THAT ARE USED IN EVALUATING FINANCIAL
32 CAPABILITY FOR A NEW CERTIFICATE APPLICATION.

33 4. THE WATER PROVIDER SERVING THE SUBDIVISION AND THE SOURCE OF SUPPLY
34 HAVE NOT CHANGED SINCE THE CURRENT CERTIFICATE WAS ISSUED AND THE WATER
35 PROVIDER HAS AGREED TO SERVE THE SUBDIVISION AFTER THE ASSIGNMENT.

36 5. WATER RIGHTS, PERMITS, LICENSES, CONTRACTS AND EASEMENTS OTHER THAN
37 THE MUNICIPAL PROVIDER'S SERVICE AREA RIGHTS AT THE TIME THE CURRENT
38 CERTIFICATE WAS ISSUED HAVE BEEN ASSIGNED AND MAY BE USED TO SUPPORT WATER
39 SERVICE TO THE PORTION OF THE SUBDIVISION THAT IS THE SUBJECT OF THE
40 ASSIGNMENT AND TO ANY REMAINING PORTIONS OF THE SUBDIVISION THAT ARE RETAINED
41 BY THE SUBDIVIDER.

42 6. THERE HAS NOT BEEN ANY CHANGE IN THE MANNER IN WHICH THE
43 CONSISTENCY WITH MANAGEMENT GOAL REQUIREMENTS WERE SATISFIED AT THE TIME THE
44 ORIGINAL CERTIFICATE WAS ISSUED.

1 B. AFTER A CHANGE OF OWNERSHIP HAS OCCURRED AND ON APPROVAL OF AN
2 ASSIGNMENT, THE DIRECTOR SHALL ISSUE A CERTIFICATE OF ASSURED WATER SUPPLY
3 IN THE NAME OF THE ASSIGNEE, RETAINING THE DATE OF THE ORIGINAL CERTIFICATE
4 AS THE DATE OF ISSUANCE.

5 C. IN THE CASE OF A PARTIAL ASSIGNMENT, THE DIRECTOR SHALL ISSUE A
6 CERTIFICATE IN THE NAME OF THE ASSIGNEE FOR THE PORTION OF THE SUBDIVISION
7 THAT IS THE SUBJECT OF THE PROPOSED ASSIGNMENT, AND SHALL ISSUE A CERTIFICATE
8 IN THE NAME OF THE ASSIGNOR FOR THE PORTION OF THE SUBDIVISION RETAINED, EACH
9 WITH THE DATE OF THE ORIGINAL CERTIFICATE AS THE DATE OF ISSUANCE. THE NEW
10 CERTIFICATES SHALL INCLUDE ALL WATER DEMAND FOR THE SUBDIVISION REPRESENTED
11 BY THE CURRENT CERTIFICATE. THE ALLOCATION OF DEMAND BETWEEN THE
12 CERTIFICATES SHALL BE BASED ON A REASONABLE PLAN FOR ALLOCATION OF THE TOTAL
13 SUBDIVISION DEMAND AS APPROVED BY THE DIRECTOR.

14 D. SECTION 45-578 DOES NOT APPLY TO AN APPLICATION FILED UNDER THIS
15 SECTION. SECTION 45-114, SUBSECTIONS A AND B GOVERN ADMINISTRATIVE
16 PROCEEDINGS, REHEARING AND REVIEW AND JUDICIAL REVIEW OF FINAL DECISIONS OF
17 THE DIRECTOR UNDER THIS SECTION. IF AN ADMINISTRATIVE HEARING IS HELD, IT
18 SHALL BE CONDUCTED IN THE ACTIVE MANAGEMENT AREA IN WHICH THE USE IS LOCATED.

19 E. WITHIN TWO BUSINESS DAYS AFTER RECEIVING AN APPLICATION UNDER
20 SUBSECTION A OF THIS SECTION, THE DIRECTOR SHALL POST NOTICE OF THE
21 APPLICATION ON THE DEPARTMENT'S WEB SITE UNTIL THE DIRECTOR ISSUES A DECISION
22 ON THE APPLICATION. THE NOTICE SHALL INCLUDE NOTICE OF THE RIGHT TO SUBMIT
23 COMMENTS ON THE APPLICATION AS PROVIDED IN THIS SUBSECTION, INCLUDING A TOLL
24 FREE NUMBER WHERE COMMENTS MAY BE SUBMITTED BY TELEPHONE AND THE ADDRESSES
25 WHERE COMMENTS MAY BE SUBMITTED BY UNITED STATES MAIL, ELECTRONIC MAIL AND
26 HAND-DELIVERY. ANY PERSON MAY SUBMIT COMMENTS ON THE APPLICATION WITHIN
27 FOURTEEN CALENDAR DAYS AFTER THE FIRST DAY THAT NOTICE OF THE APPLICATION IS
28 POSTED ON THE DEPARTMENT'S WEB SITE. THE DIRECTOR SHALL CONSIDER ALL TIMELY
29 COMMENTS SUBMITTED ON THE APPLICATION BEFORE ISSUING A DECISION ON THE
30 APPLICATION. WITHIN TWO BUSINESS DAYS AFTER ISSUING A DECISION ON THE
31 APPLICATION, THE DIRECTOR SHALL POST NOTICE OF THE DECISION ON THE
32 DEPARTMENT'S WEB SITE FOR A MINIMUM OF FOURTEEN DAYS. NOTWITHSTANDING TITLE
33 41, CHAPTER 6, ARTICLE 10 AND SECTION 45-114, A PERSON WHO SUBMITS COMMENTS
34 ON AN APPLICATION PURSUANT TO THIS SUBSECTION IS NOT A PARTY FOR PURPOSES OF
35 TITLE 41, CHAPTER 6, ARTICLE 10, IS NOT ENTITLED TO AN ADMINISTRATIVE HEARING
36 BEFORE OR AFTER THE DIRECTOR'S DECISION ON THE APPLICATION AND IS NOT
37 ENTITLED TO JUDICIAL REVIEW OF THE DIRECTOR'S DECISION.

38 F. FOR THE PURPOSES OF THIS SECTION, "ORIGINAL CERTIFICATE" MEANS THE
39 INITIAL CERTIFICATE OF ASSURED WATER SUPPLY THAT IS ISSUED BY THE DIRECTOR
40 FOR A SUBDIVISION.

41 Sec. 2. Emergency

42 This act is an emergency measure that is necessary to preserve the
43 public peace, health or safety and is operative immediately as provided by
44 law.

APPROVED BY THE GOVERNOR MAY 17, 2004.

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FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 17, 2004.